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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,039	02/27/2002	Kevin C. South	8017-357/FG-4441	8434

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EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 09/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/084,039	SOUTH ET AL.	
	Examiner	Art Unit	
	Charles E. Cooley	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                           | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) --- | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 8-9, 11-14, and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Headley et al. (US 5,405,308).

The patent to Headley et al. (US 5,405,308) discloses a centrifuge including a base plate or support plate 16 with a peripheral lip formed with a portion having an annular receiving channel of U-shaped cross-section in which a unitary cylindrical projection of rotor housing C is received to create a sealed interface (see the area proximate 12 in Fig. 1); the rotor housing C formed of plastic (col. 4, lines 29-31); the centrifuge being disposable (col. 1, lines 12-16).

3. Claims 1, 6, 7, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Joshi et al. (US 6,213,928).

The patent to Joshi et al. (US 6,213,928) discloses a centrifuge including a base plate (below 22) with a peripheral lip formed with a portion in the shape of a raised cylindrical wall which contacts and is joined to a cylindrical projection of rotor housing

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(the member in which elements 23 are located) to create a sealed interface therebetween (see the area proximate 6) in Fig. 1); the centrifuge being inherently disposable.

Furthermore, the product-by-process limitations expressed in claim 7 do not impart patentability to the claims per MPEP 2113.

4. Claims 1, 6, 7, 8, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Herman et al. (US 2001/0016549 A1).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Herman et al. (US 2001/0016549 A1) discloses a centrifuge including a base plate 25 with a peripheral lip formed with a portion in the shape of a raised cylindrical wall which contacts and is joined to a cylindrical projection of rotor housing to create a sealed interface therebetween (see Figs. 1-3); the centrifuge being disposable (paragraphs [0008] and [0051]) and being formed of plastic (paragraphs [0009] and [0051]). Furthermore, the product-by-process limitations expressed in claim 7 do not impart patentability to the claims per MPEP 2113.

5. Claims 1, 2, 9, 11, 12, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2302049.

GB 2302049 discloses a centrifuge including a base plate or support plate 35 with a peripheral lip formed with a portion having an annular receiving channel of U-shaped cross-section in which a unitary cylindrical projection of rotor housing 21 is received to create a sealed interface (see the area proximate 23 in Fig. 1); the centrifuge being inherently disposable.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 10, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Headley et al. (US 5,405,308) in view of Wilkinson (US 3,169,678).

The patent to Headley et al. (US 5,405,308) does not disclose the sealing compound. Wilkinson (US 3,169,678) discloses a housing member 11 and a plate member 12 which are joined at a peripheral region 13; the plate member 12 having a lip in which is received a projection portion of the housing 11. A sealing compound 17 is placed between the projection portion of the housing 11 and the lip of the plate member 12. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the interface between the projection and lip in Headley et al. with sealing compound as disclosed by Wilkinson for the

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purpose of filling the voids and interstices in the interface to provide a seal (col. 2, lines 25-30).

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi et al. (US 6,213,928).

Joshi et al. (US 6,213,928) does not disclose the centrifuge being formed from plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed any of the components of the centrifuge in Joshi et al. from plastic since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416; *Sinclair & Carroll Co., Inc. v. Interchemical Corp.*, 65 USPQ 297 (1945).

Furthermore, in view of the fact that the use of plastic vis-à-vis any other common construction material solves no stated problem insofar as the record is concerned and the conclusion of obviousness can be made from the common knowledge and common sense of one of ordinary skill in the art (*In re Bozek*, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969)), it would have been obvious to one of ordinary skill in the art to have formed any of the components of the prior art paint stirring equipment from a well-known construction material such as plastic. *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

It is observed that artisans must be presumed to know something about the art apart from what the references disclose (see *In re Jacoby*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962)). Moreover, skill is presumed on the part of those practicing in the

art. See *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985). Therefore, it is concluded that the selection of a well-known material in the art such as plastic would have been obvious to one of ordinary skill in this art, if for no other reason than to achieve the advantage of using a more modern material or a lower cost or more easily fabricated material.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi et al. (US 6,213,928) in view of Wilkinson (US 3,169,678).

The patent to Joshi et al. does not disclose the sealing compound. Wilkinson (US 3,169,678) discloses a housing member 11 and a plate member 12 which are joined at a peripheral region 13; the plate member 12 having a lip in which is received a projection portion of the housing 11. A sealing compound 17 is placed between the projection portion of the housing 11 and the lip of the plate member 12. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the interface between the projection and lip in Joshi et al. with sealing compound as disclosed by Wilkinson for the purpose of filling the voids and interstices in the interface to provide a seal (col. 2, lines 25-30).

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herman et al. (US 2001/0016549 A1) in view of Wilkinson (US 3,169,678).

Herman et al. (US 2001/0016549 A1) does not disclose the sealing compound. Wilkinson (US 3,169,678) discloses a housing member 11 and a plate member 12 which are joined at a peripheral region 13; the plate member 12 having a lip in which is received a projection portion of the housing 11. A sealing compound 17 is placed

between the projection portion of the housing 11 and the lip of the plate member 12. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the interface between the projection and lip in Herman et al. (US 2001/0016549 A1) with sealing compound as disclosed by Wilkinson for the purpose of filling the voids and interstices in the interface to provide a seal (col. 2, lines 25-30).

11. Claims 3, 4, 8, 13, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2302049.

GB 2302049 does not disclose the centrifuge being formed from plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed any of the components of the centrifuge of GB 2302049 from plastic since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice as explained above.

12. Claims 5, 10, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2302049 in view of Wilkinson (US 3,169,678).

GB 2302049 does not disclose the sealing compound. Wilkinson (US 3,169,678) discloses a housing member 11 and a plate member 12 which are joined at a peripheral region 13; the plate member 12 having a lip in which is received a projection portion of the housing 11. A sealing compound 17 is placed between the projection portion of the housing 11 and the lip of the plate member 12. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have



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provided the interface between the projection and lip in GB 2302049 with sealing compound as disclosed by Wilkinson for the purpose of filling the voids and interstices in the interface to provide a seal (col. 2, lines 25-30).

**Conclusion**

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (703) 308-0112. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Charles E. Cooley  
Primary Examiner  
Art Unit 1723

17 September 2003